

GREGG E. COLLINS
Claimant

COLLINS PAINTING, INC.
Respondent

EMPLOYERS MUTUAL CASUALTY COMPANY
Insurance Carrier

K.S.A. 44-534a and K.S.A. 2002 Supp. 44-551 limit the issues which can be appealed from a preliminary hearing order.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide both timely notice and written claim of the accidental injury?
- (4) Is there any defense which goes to the compensability of the claim?¹

Additionally, the Board may review those preliminary hearing orders where it is alleged a judge has exceeded his or her jurisdiction.²

In this instance, it is admitted that claimant suffered a work-related injury on August 1, 2002, when he fell from a ladder. Claimant underwent surgery and received extensive outpatient physical therapy. The dispute centers around the Order by the Administrative Law Judge that claimant be allowed ongoing sessions with a personal trainer as a form of medical treatment.

Claimant suffered accidental injury to his low back with radiculopathy into his bilateral legs on August 1, 2002. Claimant was referred for authorized treatment to physical medicine and rehabilitation specialist Kevin Rieg, M.D., and neurological surgeon John P. Gorecki, M.D. As a part of claimant's rehabilitation, he was referred to physical therapy and ordered to work with a personal trainer two times a week for three months. Both Dr. Rieg and Dr. Gorecki provided letters advising that the personal trainer prescription was just that, a prescription for ongoing medical care. The Board finds that as the personal trainer prescription was in concert with claimant's ongoing physical therapy and recommended by both of his then treating physicians, the personal trainer referral did constitute medical treatment.

Appropriate medical treatment is not an issue over which the Board has jurisdiction on an appeal from a preliminary hearing. Medical treatment is not only within the jurisdiction of the Administrative Law Judge under K.S.A. 44-534a, but is, in fact, an obligation as an issue which must be considered and determined (right or wrong) at preliminary hearings.

¹ K.S.A. 44-534a.

² K.S.A. 2002 Supp. 44-551.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

The Board concludes that the providing of a personal trainer as a form of medical treatment is not an issue over which it has jurisdiction from an appeal of a preliminary hearing. Therefore, this appeal should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated August 28, 2003, remains in full force and effect and the appeal of the respondent in this matter should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of November 2003.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Director

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).